EXHIBIT 1

U.S. SECURITIES AND EXCHANGE COMMISSION,
Washington, DC, May 25, 1995.

Hon. ALFONSE M. D'AMATO,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I understand that this morning you and the members of the Banking Committee will be considering S. 240 and that you will be offering an amendment in the nature of a substitute. While I have not had the opportunity to analyze fully the May 24th manager's amendment to the Committee print, I appreciate your leadership and efforts to address the concerns of the Commission in drafting your alternative.

The safe harbor provision in the amendment, in my opinion, is preferable to the blanket approach of H.R. 1058. It addresses a number of the concerns pertaining to the size of the safe harbor and the exclusions from the safe harbor. The Committee staff appears to be genuinely interested in the Commission's views of its draft legislation and has attempted to be responsive. I was pleased to see the latest draft deleted the requirement that a plaintiff must read and actually rely upon the misrepresentation before a claim is actionable. Your attempt to tailor the breadth of the safe harbor of the Securities Exchange Act of 1934 to the more narrow safe harbor of the Securities Act of 1933 was encouraging. However, I continue to believe that the definition should be further narrowed to parallel the items contained in my letter of May 19th. Moreover, there remain a number of troubling issues.

I continue to have serious concerns about the safe harbor fraud exclusion as it relates to the stringent standard of proof that must be satisfied before a private plaintiff can prevail. As Chairman of the Securities and Exchange Commission, I cannot embrace proposals which allow willful fraud to receive the benefit of safe harbor protection. The scienter standard in the amendment may be so high as to preclude all but the most obvious frauds. I believe that there should be a direct relationship between the level of scienter required to prove fraud and the types of statements protected by the safe harbor. My letter of May 19th indicated the discreet list of subjects that are suitable for safe harbor protection, assuming a simple ''knowing'' standard. Accordingly, if the Committee is unwilling to lower the proposed scienter level to a simple ''knowing'' standard, the safe harbor should not protect forward-looking statements contained in the management's discussion and analysis section. This would be better left to Commission rulemaking.

In addition to my concerns about the safe harbor, there is no complete resolution of two important issues for the Commission. First, there is no extension of the statute of limitations for private fraud actions from three to five years. Second, the draft bill does not fully restore the aiding and abetting liability eliminated in the Supreme Court's Central Bank of Denver opinion. I am encouraged by the Committee's willingness to restore partially the Commission's ability to prosecute those who aid and abet fraud; however, a more complete solution is preferable.

I also wish to call you attention to a potential problem with the provision relating to Rule 11 of the Federal Rules of Civil Procedure. I worry that the standard employed in your draft may have the unintended effect of imposing a ''loser pays'' scheme. The greater the discretion afforded the court, the less likely this unintended consequence may appear.

I would like to express my particular gratitude for the courtesy and openness displayed by the Committee and its staff. I hope we will continue to work together to improve the bill so as to reduce costly litigation without compromising essential investor protections.

Thank you for your consideration.

Sincerely,

ARTHUR LEVITT.

RECESS UNTIL 2:15 P.M.

The PRESIDING OFFICER. Under the previous order, the Senate will stand in recess until the hour of 2:15 p.m.

There being no objection, the Senate, at 12:33 p.m., recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. KYL).

Mr. BROWN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BRADLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BRADLEY. Mr. President, I ask unanimous consent that I may proceed as if in morning business for up to 3 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from New Jersey is recognized.

Mr. BRADLEY. I thank the Chair.

(The remarks of Mr. BRADLEY and Mrs. KASSEBAUM pertaining to the introduction of S. 969 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

PRIVATE SECURITIES LITIGATION REFORM ACT

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. The time from now until 3 p.m. will be reserved for debate on the Sarbanes amendment with the time to be equally divided in the usual manner.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

AMENDMENT NO. 1477

Mr. DOMENICI. Mr. President, I have discussed this with Senator D'AMATO. Some of the time remaining will be allocated to me by him. So let me start by yielding myself 7 minutes from our side.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. Mr. President, speaking now of the safe harbor amendment that is before us, and the safe harbor language that is in the bill, I first want to call to the Senate's attention the chilling effects on voluntary disclosure that exist today because of our failure to have an adequate safe harbor for voluntary statements about future conditions.

First:

Seventy-five percent of the American Stock Exchange CEO's surveyed have limited disclosure of forward-looking information.

That is according to an April 1994 survey.

Limited disclosure:

Seventy-one percent of more than 200 entrepreneurial companies surveyed are reluctant to discuss the companies performance. (National Venture Capital Association, 1994.)

Nearly 40 percent of investor relation personnel surveyed at 386 companies have cut back on voluntary disclosure of information to the investment community. (National Investor Relations Institute, March 1994.)

Fear of litigation is the number one obstacle to enhance voluntary disclosure by corporate managers. (Harvard Business School study, 1994.)

Less than 50 percent of companies with earnings result significantly above or below analysts' expectations released information voluntarily. That information, too, is from one of our great universities, the University of California, (November 1993.)

Mr. President, it has been asked why, originally in the Dodd-Domenici or Domenici-Dodd bills we did not have this statutory safe harbor language.

Mr. President, fellow Senators, the truth of the matter is that it has been 4 years since we first started this exercise of trying to get this law. And the final draft, more or less, of what is being alluded to as the Dodd-Domenici or Domenici-Dodd bill is 3 years old.

For those who are questioning why we do not adopt the original bill's language on safe harbor, let me just suggest that such an approach's time has come and gone. If the Senators suggesting the regulatory approach would have all come to the party 3 years ago, the bill would have been enacted. But nobody would. So what happened is we had in that bill asked that the Securities and Exchange Commission solve this problem.

Mr. President, for various reasons the Securities and Exchange Commission is not able to solve the safe harbor problem. They have had numerous hours of hearings, Commissioners are split, we are short two Commissioners. There are vacancies. Entrenched staff of that institution are arguing back and forth on philosophy and language. Meanwhile, the status quo continues, and here we sit with an unfixed safe harbor even though Congress has asked them to fix it.

Last year in appropriations, Mr. President, fellow Senators, I put in the appropriations bill report language that the SEC needed to create a new safe harbor and to report back to us by the end of the fiscal year. The provision called upon them to tell the people of this country what the safe harbor would be since the SEC wanted to develop it. They have not done it. It is almost time for another appropriations bill. And they have not done it.

Let me suggest that inaction and gridlock at the SEC do not mean we should not do something. In fact, I do